

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 18782 of 1996

Dated: 21.02.2007

Between:

A. Venkata Narayana, S/o A. Rajgopal, aged about 35 years,
Occupation: Works Inspector, Office of the Executive Engineer,
Nalgonda District Scheduled Castes Society, Nalgonda.

.... PETITIONER

AND

The District Collector-cum-Chairman, District Scheduled Castes Service
Corporation Society Ltd., Nalgonda and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 18782 of 1996

Order:

Heard Sri Mirza Saifullah Baig, learned counsel for the petitioner.
None appears for the respondents.

This is a writ petition in which the petitioner sought for a Writ of Mandamus to appoint him as Assistant Engineer with retrospective effect with all consequential benefits.

The facts, which are not in dispute, are that the petitioner was appointed as Work Inspector on daily wage basis on 12.05.1988 in the Engineering Wing (S.W) of the 1st respondent-Society. The 5th respondent was appointed as Work Inspector on 17.05.1988 in the same Wing. According to the petitioner, out of six sanctioned posts of Assistant Engineers, four posts were filled up with regular personnel. The grievance of the petitioner is that on 27.06.1994, the 5th respondent was appointed as Assistant Engineer by the 1st respondent. The petitioner, therefore, files this writ petition for the relief, which is already mentioned supra.

A counter affidavit is filed on behalf of the 1st respondent by its Executive Engineer (S.W). The stand taken by the 1st respondent in the counter affidavit is that the Government, through G.O. Ms. No. 200, Social Welfare (SCP-II) Department, dated 12.09.1985, constituted the Engineering Wing in the A.P. Scheduled Caste Co-operative Finance Corporation Limited (for short 'the Corporation') for the purpose of executing the construction works of the Corporation. The said G.O. contemplates meeting of recurring cost of the Engineering Wing from the

supervisory charges earned by the Department while executing the works. Following the said G.O., the Corporation issued circular, dated 18.02.1987 that the appointments made to the various posts in the Engineering Wing including that of Assistant Executive Engineers shall be temporary. Another circular to the similar effect was issued on 09.08.1988 and it was further mentioned in the said circular that the persons who are appointed in the Engineering Wing are not entitled for regularisation and they will be continued in the said posts as long as the District Scheduled Caste Service Co-operative Society earn enough centage charges. It is further stated in the counter affidavit that there were no rules governing the appointments/promotions of persons to fill up the temporary posts in the Engineering Wing and that the 5th respondent was promoted as Assistant Engineer purely as a temporary measure and this promotion does not confer any right on the 5th respondent to continue as Assistant Engineer for ever. It is also stated in the counter affidavit that the petitioner has no right to claim the post of Assistant Engineer.

Sri Mirza Saifullah Baig, learned counsel representing the petitioner vehemently contended that though the claim of the petitioner that the

5th respondent was junior while working as Work Inspector is not denied, promoting him, while ignoring the claim of the petitioner, is illegal, arbitrary and *mala fide*. He, therefore, contends that even in the absence of regulations or rules governing the promotions, the respondents are expected to act with fairness and transparency, and therefore the petitioner is entitled to the relief sought for in the writ petition.

I have carefully considered the contentions of the learned counsel for the petitioner. Though the petitioner in the affidavit filed in support of

the writ petition made certain averments, touching upon the validity or otherwise of the promotion of the 5th respondent, he has not sought for any relief in the writ petition to invalidate the promotion of the 5th respondent. Therefore, this Court is not concerned with the decision of the 1st respondent in promoting the 5th respondent.

The only other question, which requires consideration, is whether the petitioner is entitled to be promoted as Assistant Engineer.

As seen from the counter affidavit filed on behalf of the 1st respondent, all the posts in the Engineering Wing are temporary in nature and that the promotions are also made purely on temporary basis. In the absence of any regulation or rule governing the appointments and promotions to the Engineering Wing, it would have been reasonable for the respondents to follow certain established principles in service jurisprudence i.e., if the post is a selection post then they shall follow merit cum seniority and if the promotions were made purely on the basis of seniority then they shall consider seniority. However, as already noted herein above, the petitioner does not question the

5th respondent's promotion. So, I am not inclined to go into the validity of the promotion of the 5th respondent. In view of the stand taken by the 1st respondent that the promotions are effected purely on temporary basis, this Court cannot force the respondents to promote the petitioner irrespective of the availability of work. While the action of the respondents in ignoring the petitioner, who appears to be senior to the 5th respondent, cannot be approved, the petitioner, in the absence of existence of regular cadre, is not entitled to any direction to the respondents for his promotion. However, having regard to the afore mentioned facts, it is just and proper that respondent Nos.1 to 4 shall consider the case of the petitioner to the post of Assistant Engineer in

the event there is necessity for promoting any person to the post of Assistant Engineer, albeit temporarily. It is significant to notice that the 1st respondent in its counter affidavit failed to justify its action in ignoring the claim of the petitioner while promoting the 5th respondent, who was evidently junior to the petitioner in the cadre of Work Inspector.

I, therefore, deem it necessary and proper to direct respondent Nos.1 to 4 to consider the case of the petitioner for promotion to the post of Assistant Engineer in the event of their deciding to fill up any further post of Assistant Engineer.

Subject to above directions, the writ petition is disposed of. No costs.

C.V. NAGARJUNA REDDY, J.

Date: 21.02.2007

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